

NOT FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX  
APPELLATE DIVISION

LeVELLE T. HENRY,	)	
Appellant,	)	D.C. Crim. App. No. 2004/022
	)	
v.	)	Re: Sup.Ct.Crim..316/2004
	)	
GOVERNMENT OF THE VIRGIN ISLANDS,	)	
	)	
Appellee.	)	
_____	)	

On Appeal from the Superior Court of the Virgin Islands

Considered: August 19, 2005

Filed: December 9, 2005

**BEFORE:**     **RAYMOND L. FINCH**, Chief Judge, District Court of the Virgin Islands; **CURTIS V. GOMEZ**, Judge of the District Court of the Virgin Islands; and **BRENDA J. HOLLAR**, Judge of the Superior Court, Sitting by Designation.

**APPEARANCES:**

**LeVelle T. Henry**  
St. Croix, U.S.V.I.  
*Pro se.*

**Maureen Phelan, AAG**  
St. Thomas, U.S.V.I.  
Attorney for Appellee.

**JUDGMENT OF THE COURT**

**PER CURIAM.**

LeVelle Henry ["Henry" or "appellant"] files this *pro se* appeal challenging the sufficiency of the evidence to sustain the trial court's finding of negligent driving. Henry additionally argues the trial evidence supported a finding that it was

actually another driver's noncompliance with traffic laws that was the immediate cause of the accident that led to Henry's charges. For the following reasons, this Court will affirm the trial court's finding of guilt.

Following a one-car traffic accident on the Melvin Evans Highway, Henry was charged with negligent driving by failing to yield the right of way, thereby causing another driver to collide with a guardrail. [Joint Appendix ("J.A.") at 1, 11-12].

In the Virgin Islands, it is unlawful "for any person to operate a motor vehicle in a negligent manner over and along the public highways." 20 V.I.C. § 503 (1995). Negligent driving under that statute is defined as "the operation of a vehicle upon the public highways of this Territory in such a manner as to endanger or be likely to endanger any person or property." *Id.*; see also, *Poleon*, 184 F. Supp. 2d at 433. The trial court found that Henry had so operated her vehicle, by entering the highway at a slow rate of speed directly in front of another vehicle. [J.A. at 85-86]. The trial court further found that, although a left turn on a red light is permissible under certain circumstances, absent traffic directions to the contrary, Henry turned into oncoming traffic when it was unsafe to do so, thereby creating a hazard to other motorists. [*Id.*]. The trial court's findings are fully supported on the record by evidence sufficient to find guilt.

The evidence presented at trial was that the other motorist,

Iris Gautier ("Gautier"), was driving west to east in the right lane of the Melvin Evans Highway. Another vehicle, which she described as a white van, was traveling in the same direction in the left lane. [J.A. at 14-15]. Gautier testified the traffic light for her lane of travel was green as both her vehicle and the van approached the intersection. [*Id.* at 15]. As both vehicles entered the intersection, another vehicle exited from that intersection, causing the driver of the van to move suddenly into the right lane and causing Gautier to brake abruptly to avoid hitting that vehicle. [*Id.*].

Because of her injuries, Gautier did not see the driver of the vehicle that exited onto the highway at the time of the collision and could not identify the driver in court, although she testified it was a white car. [J.A. at 17-18]. However, her testimony pointing to Henry's negligence was supported by that of Alphonse Steele, who was also traveling west to east behind Gautier's vehicle at the time of the collision, [J.A. at 39-42], and Andre Thomas ("Thomas"), the driver of what was described as a white van or white SUV which was driving in the left lane just prior to the collision. Thomas testified that Henry's vehicle entered the highway directly in front of his vehicle, causing him to veer to the right to avoid colliding with that vehicle. [J.A. at 55-56]. Thomas also testified Henry was "either stopped or almost stopped" after moving onto the highway. [J.A. at 60].

The traffic investigator, Police Officer Keith Williams,

testified similarly and also indicated there were no posted traffic signs prohibiting motorists from turning left onto the highway on a red light, after first stopping to ensure safe clearance. [J.A. at 68-69, 73]. He additionally noted that after conducting his investigation, he concluded speed was not a factor in the accident. [*Id.* at 68-72].<sup>1</sup>

At the conclusion of the evidence, the trial judge found that Henry had pulled onto the highway at a slow rate of speed and "made a left turn at the intersection when it was unsafe to do so, creating the hazard that caused the vehicle driven by Mr. Thomas to take evasive action from hitting her vehicle thereby causing Ms. Gautier's vehicle - Ms. Gautier to take evasive action, which resulted in her hitting the guardrail," in violation of 20 V.I.C. § 503. [J.A. at 86-87]; compare 20 V.I.C. § 494a(a) (prohibiting any person from driving a motor vehicle "at such a slow speed as to impede, hinder or obstruct" traffic).

We find the evidence at trial sufficient to support Henry's

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<sup>1</sup> Henry presented a different version of events, contending she safely entered the highway and saw no oncoming cars when she did so. She asserted she was approaching the highway from the Public Safety intersection and came to a full stop at the intersection. [J.A. at 76]. After easing further up to the intersection to get a better view of the roadway, she asserted she safely made a permissible left turn onto the highway on a red light. [J.A. at 77]. Henry contends that she never observed any oncoming vehicles prior to entering the highway. [J.A. at 77]. After entering the highway, however, Henry contends she looked in her rearview mirror and saw a black jeep, apparently driven by Gautier, switching from the left to right lanes about 20 feet behind her. [*Id.*]. Shortly thereafter, Henry said a white van passed her at a high rate of speed, apparently startling Gautier and causing her to abruptly brake and lose control of her vehicle, crashing into the guardrail. [*Id.* at 77-79]. Henry maintained she was not negligent and contended the other parties' excessive speed as they approached the intersection was the cause of the accident. [*Id.* at 79-91].

conviction for negligent operation of her vehicle, notwithstanding Henry's assertion of a different theory of the case.<sup>2</sup> See *Georges v. Government of the V.I.*, 119 F.Supp.2d 514, 523 (D.V.I. App. Div. 2000); see also *United States v. Delerme*, 457 F.2d 156, 160 (3d Cir. 1972) (noting that credibility of witnesses or the weight to be afforded evidence at trial are matters left to the factfinder, who is in the best position to view the witnesses' demeanor and the other verbal and non-verbal cues which may impact on the believability of that testimony). We, accordingly, affirm.

SO ORDERED this 9th day of December, 2005.

**A T T E S T:**

**WILFREDO F. MORALES**  
Clerk of the Court

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<sup>2</sup> In reviewing challenges to the sufficiency of the evidence to support a conviction, we must determine whether, viewing the evidence in the light most favorable to the government, a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt of every element of the offense. See *Georges v. Government of the Virgin Islands*, 119 F.Supp.2d 514, 523 (D.V.I. App. Div. 2000).

We afford plenary review to questions of law. See *Rivera v. Government of V.I.*, 37 V.I. 68, 73 (D.V.I. App. Div. 1997). However, a trial court's finding of fact is entitled to more deferential review and may be disturbed only for clear error, with due regard afforded the trial court's opportunity to judge the credibility of witnesses. See *Bryan v. Government of the V.I.*, 150 F.Supp.2d 821, 827 (D.V.I. App. Div. 2001); *Poleon v. Government of the V.I.*, 184 F. Supp. 2d 428 (D.V.I. App. Div. 2002). A finding of fact in a bench trial is clearly erroneous if it is evident that "the factfinder in the first instance made a mistake in concluding that a fact had been proven under the applicable standard of proof," or where such findings: 1) are unsupported by substantial evidence; 2) lack adequate evidentiary support in the record; 3) are against the clear weight of the evidence; or 4) where the trial court has misapprehended the weight of the evidence. See *Bryan*, 150 F. Supp. 2d at 827 (citing *Davin v. U.S. Dep't. of Justice*, 60 F.3d 1043, 1049 (3d Cir. 1995)).

By: \_\_\_\_\_  
Deputy Clerk

**Copies to:**

Judges of the Appellate Panel  
The Honorable Geoffrey W. Barnard  
The Honorable George W. Cannon, Jr.  
Judges of the Superior Court  
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